

Remarks and Arguments

I. Cancelled/Withdrawn Claims and Claims Currently Pending

The examiner has rejected all of the claims 1-26 and 36 that were pending. For purposes of simplifying and expediting prosecution in this application, Applicant has cancelled claims 1-9, 22, 24-26 and withdrawn claims 27-35.

II. Claims 10-21, 23 and 36 Remain Pending In this Application

A. Independent Claims 10, 20 and 36 - are not anticipated or obvious

Claims 10, 20 and 36 remain as independent claims. The Examiner cites two primary references against all of the remaining claims.

The examiner has rejected claims 10 and 36 as anticipated by the Gordon reference, U.S. Patent No. 6,036,622.

The Examiner has rejected claims 10 and 22 (now claim 20 with the above amendment) as anticipated by the Hsieh reference, U.S. Patent No. 5,605,521.

B. None of the Independent claims are Anticipated There is No Prior Art That Teaches That on the Same Side: Pedal Goes Forward/Arm Goes Forward, Pedal Goes Back/Arm Goes Back

Independent claims 10, 20, 36 each call for both a left arm/left pedal and a right arm/right pedal that pivot forwardly and backwardly with each other.

There is **no** prior art that teaches this kind of apparatus or structure or function or construction.

Neither the Gordon nor the Hsieh apparatus suggest or disclose such a system. In fact, the Gordon and Hsieh references teach the **opposite**.

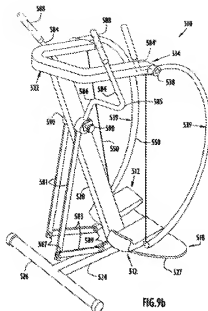
The Gordon Device Teaches Same Side Pedal Forward/Arm Backward

The examiner cites column 8, lines 58-60 and Figure 9b of the Gordon reference as support for the proposition that Gordon teaches "...a pair of left and right manually graspable arms (584) interconnected to a respective one of the pedals such that the left arm pivots forwardly together with the forward movement of the left pedal, the left arm pivots rearwardly together with backward movement of the left pedal, the right arm pivots forwardly together with forward movement the right pedal, the right arm pivots rearwardly together with backward movement of the right pedal...."

This is incorrect. At column 8, lines 58-60, Gordon specifically says:

"Arm levers 584 move with foot supports 512 so that, for example ***when a foot support moves forward, the corresponding arm lever moves rearward***, and vice-versa."

Figure 9b of Gordon bears out this explicit description, i.e. that an arm 584 must move one way and the foot pedal 512 must move in the opposite, not the same, direction.



As shown in Figure 9b and in every other relevant figure of the prior art, the arm lever 584 is interconnected via two other levers 581 and 583 to cause the foot supports to move in opposite front to back direction on pivoting from front to back.

The Hsieh Device Teaches Same Side Pedal Forward/Arm Backward

The examiner cites Figure 1 and 4 and Col. 4, lines 20-50 of the Hsieh reference as support for the proposition that Hsieh teaches "...an apparatus comprising a pair of left and right foot pedals (30, 32) mounted on a frame by linkages for movement along an arcuate path and a pair of left and right manually graspable input arms (34, 36)[in which]....the left arm pivots forwardly together with forward movement of the left pedal, the left arm pivots rearwardly together with backward movement of the left pedal, the right arm pivots forwardly together with forward movement of the right pedal, the right arm pivots rearwardly together with backward movement the right pedal...."

This is incorrect. At column 4, lines 2-11, Hsieh specifically says the opposite:

"For each of the stride assemblies, there is provided a respective rigid link 70, 72 which is pivotally coupled at a first end to the respective leg members 26, 28 via the respective pin 66, 68 and is pivotally coupled at a second end to the respective arm member 34, 36 via the respective pin 62, 64. ***Thus, as the foot platform 32 is moved forwardly***, the leg member 28 pivots in a counterclockwise direction (as viewed in Fig. 4) about its pivot axis and the link 72 is moved forwardly. ***This causes the tube 54 and the arm member 36 to also pivot in a counterclockwise direction, moving the hand grip 40 rearwardly.***"

Further at column 4, lines 35-42, Hsieh states:

"As is clear from FIG. 4, the rigid link 88 is mounted to the leg member 28 below its pivot axis and is mounted to the bar 74 above the pivot axis of the arm member 34, to which the bar 74 is fixedly secured via the shaft 48. ***Thus, as the foot platform 32 [on the right side] is moved forwardly***, the link 88 is also moved forwardly and moves the bar 74 forwardly, ***thereby moving the arm member 34 [on the left side] forwardly.***"

Figure 4 of Hsieh bears out this explicit description, i.e. that when a left or right foot pedal moves forward a corresponding arm must move in the ***opposite*** rearward direction and vice versa.

With regard to the apparatus depicted in Figure 1, Hsieh's specification or description noted immediately describes the operation as pictorially noted below, RF meaning right forward, RB meaning right backward, LF meaning left forward, LB meaning left backward:

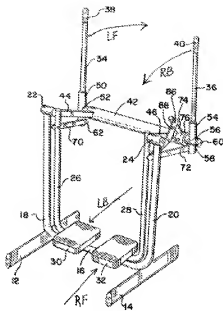


Fig. 1

Thus, per Hsieh's column 4, lines 2-11 and 35-42 description, the left and right foot pedals 30, 32 move in **opposite** directions RF/RB relative to their associated arms/handles 34/38 and 36/40, not in the same direction as called for by claims 10, 14 and 36 of the present application.

C. The Section 102 Rejection Should be Withdrawn

At a minimum, neither Gordon nor Hsieh nor any of the other references cited by the Examiner disclose a system that has an arm and a pedal on the same side of the apparatus that pivot in the same direction as called for by the claims remaining in this application.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Ex Parte Swope, 2004 Pat. App. LEXIS 30, (Bd.Pat.App. 2004). Whole elements of a claim that

are missing in the prior art make a Section 102 rejection clearly improper. Ex Parte Swope, 2004 Pat. App. LEXIS 30, (Bd.Pat.App. 2004).

Moreover, in mechanical cases such as this, claim limitations calling for mechanical relationships, must be found literally in the prior art reference being applied in order for a Section 102(b) anticipation to be properly said to exist. In Re Bart, 918 F.2d 187 (Fed. Cir. 1990).

D. Obviousness Cannot Apply Based on the References of Record

A section 103 rejection based on the combination of any two or more references cited by the Examiner including the Gordon and Hsieh references is improper because it is fundamental to a finding of obviousness that the applied references must collectively set forth "all" of the elements of the claimed invention. Alza Corporation v. Mylan Laboratories, Inc., 464 F.3d 1286 at 1291 (Fed. Cir. 2006).

None of the cited references disclose a pedal and an arm that both move forwardly or backwardly together. Thus the all-elements rule of Alza cannot be met by any combination of the references cited by the examiner.

CONCLUSION

Reconsideration of the present application and early and favorable action is respectfully requested. If the examiner believes that a teleconference would expedite prosecution of the present application, the examiner is invited to call the Applicant's undersigned attorney at the Examiner's earliest convenience.

Any amendments, withdrawal or cancellation of claims made herein is made without prejudice and is not an admission that said withdrawn, canceled or amended subject matter is not patentable. Applicant reserves the right to pursue said withdrawn, canceled or amended subject matter in one or more continuation or divisional applications.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 02-3038, under C016/7080US5.

Respectfully submitted

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